IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.E.A. No.68 of 2006
Date of decision: December 04, 2006

Commissioner of Central Excise Commissionerate, Ludhiana.

-----Appellant

Vs.

M/s Gupta Electrical & Hardware Store, Samana, (PB.).

-----Respondent

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL

Present: Mrs. Daya Chaudhary, Assistant Solicitor General of India
for the appellant.

Mr.Pawan Pahwa, Advocate and
Mr. Amit Dhawan, Advocate
for the respondent.

ORDER:

The revenue has approached this Court by filing the present appeal, raising following substantial questions of law out of the order dated 4.5.2005, passed by Customs, Excise & Service Tax Appellate Tribunal (for short, "the Tribunal"), New Delhi in appeal No.E/500/03-NB(SM) (Annexure P-2):-

"i) Whether the order of Tribunal passed without taking into cognizance the statement of different persons (buyers) tendered under Section 14 of the Central Excise Act, 1944 where in they clearly admitted that they had purchased complete Engines / Generators in working condition, is correct?;

ii) Whether order passed without appreciating the evidences which support the facts of clandestine manufacture and clearance of the Diesel Engines based on the information obtained from the invoices issued by the party and as provided by various PAD Bank/branches which show a difference ranging from 21, 592, 922 and 990 in number during the period 1994-95, 1995-96, 1996-97 and 1997-98 respectively is

correct? The Hon'ble CESTAT has not taken into account the set procedure followed by the PAD Banks while providing finance for the diesel engines which was much in excess of sale figures reflected in the invoices issued by the party?

iii) Whether it is correct to draw inference from some of the statements of PAD Banks / Insurance Co. branches that these institutions did not follow the procedure of physical verification of the diesel engines while sanctioning of loan and for which loan has been sanctioned and treated it as the basis of allowing the appeal of the party without going into the statements tendered under Section 14 of the Central Excise Act, 1944 by some of these institutions that the party has supplied the complete engines to the farmers/customers duly financed by them after following the proper procedure while granting loan or insuring the goods in question?

iv) Whether setting aside of order is correct merely on the ground that certain documents were not supplied to the party or certain cross examinations were not allowed without considering the fact the party intentionally had not participated in the enquiry for which department issued repeated summons? and

v) Whether the order of Hon'ble tribunal passed without taking into cognizance of the facts that copies of invoice issued by the party shows loose kit as against actual description of goods namely Diesel Generator set / Diesel Engine as detailed in para 11 to 25 of the show cause notice issued to the party wherein numerous persons / customers of the party admitted that they purchased Diesel Generator set / Diesel Engine instead of loose kit, is correct?"

From the order of the adjudicating authority, it is revealed that cases of 60 parties were decided by a common order. In appeal, the order of the adjudicating authority was set-aside by different orders passed by the Tribunal. In appeal against the order of the Tribunal in other cases, namely CEA No.17 of 2004, ***The Commissioner, Central Excise Commissionerate v. M/s Azad Engg. Works and others***, the issue has been gone into and the matter has been

remanded back to the adjudicating authority for reconsideration, vide judgment of this Court rendered on 21.04.2006.

Since the issue in the present appeal is also similar to the issue considered in ***M/s Azad Engg. Works*** (*supra*), the present case is also remanded back to the adjudicating authority i.e. Commissioner, Central Excise, Ludhiana for fresh decision in terms of the observations made in the order referred to above.

The assessee through his counsel is directed to appear before the adjudicating authority i.e. Commissioner, Central Excise, Ludhiana for further proceedings on 11.01.2007.

The appeal is disposed of in the manner indicated above.

(ADARSH KUMAR GOEL)
JUDGE

December 04, 2006
ashwani

(RAJESH BINDAL)
JUDGE